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In re Application of :
Jeffrey Batoff :
Application No. 10/085,394 : DECISION ON PETITION
Filed: 28 February, 2002 : UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. NEXP-0005 :
:

This is a decision on the petition under 37 CFR 1.78(a)(3), filed on 13 April, 2006, to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 and 365(c) for the benefit of priority to prior-filed international Application No. PCT/US01/30002, filed on 26 September, 2001, as set forth in the accompanying amendment.

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR § 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000 and after the expiration of the period specified in 37 CFR §§ 1.78(a)(2)(ii). In addition, the petition under 37 CFR § 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR § 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR § 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional where there is a question whether the delay was unintentional.

The petition does not comply with item (1).

The benefit claim as stated is improper. The instant nonprovisional application cannot claim priority to the stated provisional applications because the instant application was not filed within twelve (12) months of the filing date of the provisional applications. However, petitioner may

wish to assert a claim of priority from the prior-filed PCT application to the filing date of the provisional applications.

Before the petition under 37 CFR § 1.78(a)(3) can be granted, a renewed petition under 37 CFR § 1.78(a)(3) and a proper amendment (complying with 37 CFR 1.121 and 37 CFR 1.76(b)(5)), which properly states the relationship of the prior-filed applications to this application, are required.

Further correspondence with respect to this matter should be addressed as follows:

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Any questions concerning this matter may be directed to Senior Petitions Attorney Douglas I. Wood at (571) 272-3231.

Frances Hicks
Frances Hicks
Lead Paralegal
Office of Petitions

AMENDMENTS TO THE SPECIFICATION

On page 1, after the title, please amend the following paragraph:

CROSS REFERENCE TO RELATED APPLICATIONS

The present application is a continuation of U.S. Application Serial No. 10/620,692, filed on July 17, 2003, which in turn is a continuation application of U.S. Application Serial No. 09/793,131 filed on February 27, 2001 (now U.S. Patent No. 6,996,041, granted February 7, 2006), which claims priority under 35 U.S.C. 119 to the following foreign application: Japanese Application No. 2000-058081, dated March 3, 2000, the disclosures of which [[is]] are incorporated by reference in [[its]] their entirety.

REMARKS

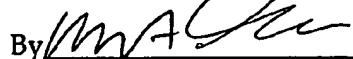
The specification has been amended to refer to prior applications. Applicants file concurrently herewith a Petition to Accept and Correct an Unintentionally Delayed Claim for Priority under 37 C.F.R. § 1.78(a)(3) together with the surcharge set forth under § 1.17(t).

A corrected filing receipt indicating the benefit of the filing date of February 27, 2001 (i.e., the filing date of U.S. Application Serial No. 09/793,131, now U.S. Patent No. 6,996,041) is solicited.

Allowance of the application is solicited.

Dated: April 3, 2006

Respectfully submitted,

By 

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